IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Criminal Misc. No. 3867-M of 2006

Date of Decision : 24.04.2007

Isham Singh. …. Petitioner

Versus

Tara Devi ….Respondent

CORAM : HON'BLE MR. JUSTICE S.D. ANAND

Present : Mr. Madan Pal, Advocate,
for the petitioner.

None for the respondent.

S.D. ANAND, J.

This petition is directed against the order dated 08.11.2004 vide which the learned Trial Magistrate ordered the summoning of the petitioner as accused to stand trial for offences under Sections 420, 467, 468, 471/120-B of the Indian Penal code.

For enabling appropriate appreciation of the controversy, it would be useful to indicate the allegations of the complainant in the first instance. The petitioner is an agent of Life Insurance Corporation (hereinafter referred to as "LIC). Mahinder alias Ravinder – husband of respondent/accused no.1 – Kamlesh obtained a Life Insurance Policy through the petitioner. The risk covered was Rs. one lac. After the deposit of the first instalment, Mahinder alias Ravinder died on 31.12.2001. However, with an intent to defraud the Life Insurance Corporation, the petitioner entered into conspiracy with Kamlesh and deposited further instalment even after the death of the deceased. The deposit of two instalments was required in order to enable the drawal of life insurance benefit. Thereafter, a false death certificate was obtained in which the date

of death of Mahinder alias Ravinder was given as 31.01.2002. In that certificate, it was indicated that the death of Mahinder @ Ravinder had been reported to the concerned authorities on 14.02.2002. On account of the above facts, the LIC released a sum of Rs. 1,29,587/- to Kamlesh, who was enabled in that behalf by the petitioner. Out of the maturity value amount, a sum of Rs. 3213/- was deducted by the LIC as an instalment vide cheque No. 0521396 dated 13.08.2002.

In the preliminary evidence, the complainant stepped into the witness box. A report by the police under Section 202 of the Code of Criminal Procedure was also obtained and placed on record.

On perusal of the testimony on oath of the complainant and also the contents of report under Section 202 Cr.P.C. furnished by the police, the learned Trial Magistrate passed the impugned order.

The plea raised by the learned counsel, at the very outset, is that the present complaint is nothing but a sheer abuse of the process of Court inasmuch as the petitioner had no axe to grind in the entire affair and he has been unnecessarily blamed and harassed by having been summoned to face the trial.

The plea raised is completely oblivious of the fact that there are precise allegations against him which are relatable to his functioning as an LIC agent. The impugned policy had been obtained through him only. The insured died after only the first instalment had been paid. As per the relevant instructions, the maturity value would not have been payable to the nominee if only one instalment had been paid. These facts were to be noticed of the petitioner only in his capacity as LIC agent. It was he who got the remaining two instalments deposited, thereby enabling the payment of

the maturity value of the policy to Kamlesh. Thus, the petitioner cannot be heard to argue that he had no role to play in the context.

It was, then, argued by the learned counsel for the petitioner that the impugned summoning is invalid for want of compliance with the provision of Section 204(2) of the Code of Criminal Procedure.

The plea is devoid of merit. All that Section 204(2) provides is that the issuance of process is barred if the list of witnesses is not filed. It is not the consideration of preliminary evidence and summoning on the basis thereof which is barred. The plea shall stand repelled accordingly.

It may be noticed that it is presently only the summoning of the accused which has been ordered on the basis of the preliminary evidence. The correctness / truthfulness or otherwise of the allegations would be tested on the touch stone of cross examination at the trial.

It may also be noticed that the police also made a report under Section 202 Cr.P.C. and found as under:-

> "The death of Mahinder @ Ravinder had taken place on 31.12.2001 in village Kamoda. The immersion of his excisions was done at Haridwar immediately thereafter on 02.01.2002 and was recorded by the family panda in the relevant bahi."

The police also obtained a photocopy of the relevant bahi. The testimony on oath made by the complainant and the finding recorded by the police under Section 202 Cr.P.C. validly formed the basis of the impugned order which cannot be invalidated on any count.

In the light of foregoing discussion, this petition is held to be devoid of merit and is ordered to be dismissed.

April 24, 2007 **(S.D. ANAND)**
vkd **JUDGE**